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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1143

CONCACIS YOHANES

versus

AYERS STEAMSHIP CO., INC.

PETITION OF CONCACIS YOHANES FOR WRIT OF CERTIORARI

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Reference to the official and unofficial report of the opinions delivered in the courts below.

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 451 F. 2d 349 (1972).

STATEMENT OF THE GROUNDS UPON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Jurisdiction is invoked under 28 U.S.C. Section 1354 (1) in that petitioner seeks review by writ of certiorari the decision of the United States District Court for the Eastern District of Louisiana which decision was affirmed by the United States Court of Appeals for the Fifth Circuit. (Decisions attached in Appendix I and II).

The petition for rehearing was denied on December 8, 1971.

QUESTION PRESENTED FOR REVIEW

Can a Panamanian corporation, owning and operating one vessel which does a regular and substantial trade, between the U.S. and other nations *not* including Greece, the country of its flag, avoid the application of U. S. law to tort suits by its seamen-employees by buying Greek flags to fly on its ship and manning it with Greek crews hired under contracts providing an exclusive Greek remedy, for the sole reason that it has not opened an office in the U. S.?

STATEMENT OF THE CASE

This complaint was filed by Concacis Yohanes under the Jones Act and general maritime law for personal injuries sustained aboard the S.S. SKINOS, a foreign flag vessel in the port of New Orleans on April 6, 1970. The action was instituted in the United States District Court, Eastern District of Louisiana bearing Civil Action No. 70-1131 of the Court.

Answer was filed on behalf of Marmana Compania Naviera, S.A., the owner of the S.S. SKINOS, on November 27, 1970. The defendant shipowner subsequently filed a Motion for Summary Judgment based on forum non conveniens. On January 6, 1971 the District Court entered a memorandum opinion and order dismissing the complaint. Complainant thereafter appealed the judgment of the District Court to the Fifth Circuit, bearing No. 71-1246. On November 16, 1971 the Fifth Circuit rendered a per curiam decision affirming the trial court.

Complainant petitioned the Fifth Circuit for a rehearing and on December 8, 1971 the rehearing was denied.

The basis for Federal jurisdiction in the court of first instance, the United States District Court was under the Jones Act, 46 U.S.C. 648, and general maritime law.

STATEMENT OF FACTS

Concacis Yohanes entered the contract of employment in Greece and signed articles aboard the S.S. SKINOS in Hamburg, Germany.

The S.S. SKINOS carried a Greek flag, although it was actually owned by a Panamanian corporation, Marmana Compania Naviera, S.A.

The majority of the officers of the owner corporation are Canadians. The stockholders are Canadian and Greek.

The owner-corporation does not maintain its offices in the United States nor has it registered to do business in any state of the United States. However, its vessel, S.S. SKINOS has maintained a regularly scheduled course among the ports of the United States. The volume of business enjoyed by the shipowner in the United States, is extensive and the contracts made with American ports is comparatively greater than with any other ports in the world.

The general agent for the shipowner, Phoenix Shipping Co., Ltd., was an English corporation, three of whose directors are British and one Greek.

The operator of the vessel for the country of the vessel's flag, Greece, was George D. Gratos Company, Ltd. This company supposedly maintained offices in Greece and operated therefrom, although the vessel visited Greece only once before the accident involved in this complaint and that was in June of 1964 for three weeks of repairs.

The relator herein was injured aboard the S.S. SKINOS in navigable waters of the United States. From the scene of the accident, relator was immediately taken to the United States Public Health Service Hospital in New Orleans, Louisiana. He remained under the treatment of staff physicians until April 24, 1970 wherein he received the major and most important part of his treatment. Therefore, relator's chief medical witnesses are American physicians who reside in the New Orleans area and who speak only English.

ARGUMENT

Is the rationale of *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, 90 S. Ct. 1731, 26 L. Ed. 252 (1970) applicable to the instant case?

The recent Supreme Court decision of *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, 90 S. Ct. 1731, 26 L. Ed. 252 (1970), bears a striking similarity in facts and controlling factors to the instant case.

Rhoditis was a Greek seaman, who had been hired in Greece, and was injured while on the Greek flag vessel of his Greek corporate employer when the ship was in United States waters. He sought recovery under the Jones Act, although he had a remedy available under Greek law.

In the instant case, Yohanes, the relator, was a Greek seaman, who had been hired in Greece, and was injured while on the Greek flag vessel of his Panamanian corporate employer when the ship was in United States waters. He seeks recovery under the Jones Act although a remedy is allegedly available in Greece. (In the instant case there is, however, considerable dispute as to whether there is an adequate remedy available.)

The contfolling criteria, in determining whether relief should be afforded under the Jones Act, prior to *Rhoditis* was set forth in *Lauritzen v. Larsen*, 345 U.S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953). As has been relied on and reiterated by the courts numerous times since the decision in *Lauritzen*, the considerations are:

1) Place of the accident
2) Law of vessel's flag
3) Allegiance of domicile of injured
4) Allegiance of defendant shipowner
5) Place of contract
6) Inaccessibility of foreign forum
7) Law of forum

Ostensibly these seven factors as applied in *Rhoditis* and the instant case are precisely the same. Should

we delve no deeper into the rationale of *Rhoditis*, we must assume, at this point, that jurisdiction should have been exercised in the instant case as it was in *Rhoditis*.

However, relator does not contend or pretend that *Rhoditis* simply relied on the seven factors established in *Lauritzen* as a basis for its decision. After all, the factors favoring jurisdiction in *Lauritzen* and the next decision decided by the Supreme Court in *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 79 S. Ct. 468, 3 L.Ed. 2d 368 (1959) were certainly as substantial as in the instant case, although jurisdiction was declined. In *Romero*, the only two factors favoring United States jurisdiction was the place of the accident and the law of the forum. In denying relief, the Supreme Court referred exclusively to the seven guides in *Lauritzen*.

For purposes of arriving at a decision in the instant case a precise determination of what the additional counterweight was must be made and its applicability.

The court in *Rhoditis* revealed that the *Lauritzen* tests are not mechanical (345 U.S. at p. 582). Again, it should be noted that the shipowner in *Rhoditis* had four out of the seven factors on his side. Although this was the first time that the Supreme Court enunciated the belief that the factors in *Lauritzen* were not meant to be mechanical or exclusive, there were other earlier lower court decisions to that effect. The 2nd Circuit in *Parlou v. Ocean Traders Marine Corp.*, 211 F. Supp. 320, 325, stated that the list of seven factors in *Lauritzen* was not intended as exhaustive and the 4th Circuit

in *Southern Cross Steamship Co. v. Firipis*, 285 F. 2d 651 at p. 654 also looked beyond those ostensible factors.

Ever since *Lauritzen*, courts have been diluting the relative importance of the seven factors involved. Many factors have lost their significance even as noted in the *Lauritzen* decision itself, and through judicial interpretation they have become almost valueless. Assessing the factors in sheer guess work and at this stage of jurisprudential development, it is obvious that they do not present the type of guideline originally contemplated in *Lauritzen*.

The first factor, the place of the wrongful act, though traditionally significant in shoreside torts and obviously considered somewhat relevant in *Lauritzen*, has been seriously limited, if not eliminated for consideration in *Romero* and *Kapatsas v. m/v Bailby*, 238 F. Supp. 654. (E.D. La. 1965). Yet, irreconcilably, *Bartholomew v. Universe Tankship, Inc.*, 263 F. 2d 437 cert. den. 359 U.S. 1000, characterized the place of the tort as a "factor of significance".

The second factor, the law of the flag was considered by *Lauritzen* in these terms:

> "perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag. (345 U.S. at p. 584, 73 S. Ct. at p. 929.)

and furthermore,

> "the law of the flag prevails unless some heavy counterweight appears (345 U.S. at p. 930.)

However, *Lauritzen* recognized exceptions as expressed in later decisions. The courts have looked beyond the flag to the real national interest where it is other than the insignia and in these instances has termed it merely "a flag of convenience". *Bartholomew v. Universe Tankship, Inc.*, 263 F.2d 437 at 446 (1959); *Groves v. Universe Tankship, Inc.*, 308 F. Supp. 826 (1970). Thusly, the flag, now, may mean no more or less than the factor (fourth) of allegiance of the defendant shipowner and therefore, ultimately may be read out of consideration.

Thirdly, the allegiance or domicile of the injured, is apparently only of real significance when the injured seaman is a U.S. domiciliary. *Urvic v. F. Jarka Co.*, 282 U.S. 324; *Gambera v. Bergoty*, 132 F.2d 414. However, all seaman of whatever allegiance are entitled to protection under the "Jones Act" and their allegiance should likewise play little, if any, significance in depriving them of its effect. As stated in *Kyriakos v. Goulandris*, 151 F. 2d 132 (1945):

> "When Congress used the word 'seaman' in the Jones Act, it employed a word of general application, embracing men of any nation who sails the seas."

Therefore, at least as far as application of the Jones Act is concerned, this factor should be insignificant.

Fourthly, the allegiance of the defendant shipowner, also has proved to be of limited application. Today's shipowners invariably are comprised of corporations. These corporate shipowners may be and in many cases are composed of stockholders and officers of varying nationalities. *Pavlou, Southern Cross,* and *Rhoditis* pierced the corporate veil and apparently the courts were more concerned with the true owner's avoiding the obligations of the Jones Act while remaining in America and receiving all of the commercial and economical benefits of transacting business among our ports. What posture the court will take should the stock ownership of the corporate shipowner be divided among both American and foreign residents, or as in the instant case, only foreign, remains conjectural.

However, it appears that at least in the 2nd Circuit, no matter what the citizenship of the ultimate corporate vessel owning stockholder is, the Jones Act applies if, and only if the ship is controlled from a U.S. base of commercial domicile. (Compare *Argyros v. Polar Compania De Navegacion, Ltda.,* (S.D. N.Y. 1956) 156 F. Supp. 624; *Mproumericotio v. Seacrest Shipping Co.,* (S.D. N.Y. 1957) 149 F. Supp. 265; *Moutzouris v. National Shipping and Trading Co.,* (S.D. N.Y. 1961) 194 F. Supp. 468; *Zrelenski v. Empresa Hondurena de Vapores,* (S.D. N.Y. 1953) 113 F. Supp. 93; *Bobolakis v. Compania Panamena Maritima San Gerassimo, S.A.,* (S.D. N.Y. 1958) 168 F. Supp. 236, and *Voyiatzis v. National Shipping and Trading Corp.,* 199 F. Supp.

920, where the courts *isolated* "base of operations" or "commercial domicile" as the controlling factor.

Fifthly, the place of contract has been given limited significance even in *Lauritzen*. As stated at p. 931,

> "a seaman takes his employment, like his fun, where he finds it; a ship takes on crew in any place where it needs them."

The sixth and seventh factors, *the inaccessibility of* the Foreign Forum and Law of the Forum should be considered jointly. In *Lauritzen* the forum is held of little significance while the 5th Circuit in *Symonette Shipyards, Ltd. v. Clark*, 365 F. 2d 464 (1966) suggested that the significance may be greater. The court said:

> "it might be well to point out that in this case the law of the U. S. is established and easily determinable, whereas the evidence relating to the law of the Bahamas is vague and indefinite."

Furthermore, in *Voyiatzis v. National Shipping and Trading Corp.*, 199 F. Supp. 920 (1971), the court said that:

> "Plaintiff, although a Greek resident, has chosen this forum and his choice should not be lightly disregarded merely because defendants are willing to be sued elsewhere. If the Jones Act is applicable it is of little significance where the plaintiff resides; that the testimony of plaintiff and other witnesses prob-

> ably will be in Greek is, also in our opinion of little significance."

The Supreme Court in *Lauritzen* listed the above factors and answered the question of whether U.S. law applies by "ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved," and "from weighing of the significance of one or more connecting *factors between the shipping transaction* and the national interest served by the assertion of authority". *Lauritzen*, 345 U.S. at 582.

> "Hence, it must be said that in a particular case something between minimal and preponderant contacts is necessary if the Jones Act is to be applied. .... The test is that 'substantial' contracts are necessary." *Bartholomew v. Universe Tankship, Inc.*, (2 Cir. 1959) 263 F. 2d 437, 439, cert. denied, 359 U.S. 1000.

However, after reviewing the seven factors in *Lauritzen* and their relative significance according to the courts of this land, it is obviously impossible to rely on any precedent in this area. If it is impossible to rely on *Lauritzen* as a mechanical test and it is impossible to determine which contacts are more significant, if any, then there must be something more concrete on which to determine the appropriate forum. It would appear that the Supreme Court in *Hellenic Lines, Ltd. v. Rhoditis* (supra) isolated that added factor which in and of itself can support jurisdiction. This factor is the *base of operations* and the court stated:

"*The Hellenic Hero was not a casual visitor; rather, it and many of its sister ships were earning income from cargo originating or terminating here.* We see no reason whatsoever to give the Jones Act a strained construction so that this alien owner, *engaged in an extensive business operation in this country,* may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibility of a Jones Act 'employer.' The flag, the nationality of the seaman, the fact that his employment contract was Greek, and that he might be compensated there are in the totality of the circumstances of this case minor weights in the scales *compared with the substantial and continuing contacts which this alien owner has* with this country. *If,* as stated in Bartholomew v. Universe Tankships, Inc., 263 F. 2d 437, *the liberal purposes of the Jones Act are to be effectuated, the facade of the operation must be considered as minor, compared with the real nature of the operation and a cold objective look at the actual operational contacts that this shop and this owner have with the United States.* By that test the Court of Appeals was clearly right in holding that petitioner was an 'employer' under the Jones Act." 26 L. Ed. 2d 256-257. (Emphasis supplied.)

In the instant case the owner, Marmana Compania Naviera S.A., owned only one vessel which is the S.S. SKINOS. This ship called on United States ports a total of forty-five times between January 1, 1967 and April

6, 1970. (answer to Interrogatory No. 15, p. 6-7) Thus, the S.S. SKINOS called on U.S. ports an average of fifteen times a year during the three years prior to the accident. Yet, the S.S. SKINOS made *not* one voyage from the country of its flag (Greece) to other parts of the world (answer to Interrogatory No. 24, p. 11). In fact, since 1965, the only connection that the vessel had with Greece was a short layover for repairs (answer to Interrogatory No. 24, p. 11) As in *Rhoditis*, the contacts with the country of the flag were nominal and the flag entirely predicated on economic expediency. It is in the United States (in both *Rhoditis* and the instant case) that the shipowner relies for a profitable business operation. It is in the United States in both *Rhoditis* and the instant case that there are substantial and continuing contacts with this country.

Factually, however, there is a difference between *Rhoditis* and the instant case i.e. in *Rhoditis* the shipowner had been a U. S. Domiciliary for a substantial period of time with offices in this country. In the instant case, although the shipowner was deriving his economic benefit from U.S shipping, he was not a domiciliary of this country, nor did he maintain his offices here. Relator, however, looks to the real intent of *Rhoditis* and asks, Isn't this only a superficial distinction? In interpreting the decision of the majority in *Rhoditis*, it does not appear to be their intent to limit the decision to its facts. Rather, surely the court decided that each case should be examined on its own facts, as indicated by the statement:

> '... the facade of the operation must be considered as minor, compared with the real na-

> ture of the operation and a cold objective look at the actual operational contacts that this ship and this owner have with the United States." (90 S. Ct. at 1734.)

The court certainly foresaw many possible corporate shams devised by countless legal sophisticates for countless shipowners created in order to escape jurisdiction under the Jones Act as well as the concomitant tax problems. Each and every sham is not constructed like the Hellenic Lines, Ltd. farce in *Rhoditis*. Therefore, it is not the particular facts which control but simply a question of whether there is substantial operational contacts. However, pretermitting this question, wasn't *Rhoditis* talking more about commercial domicile than merely where the shipowner "hung his hat at night". That is, what appeared to deeply concern Mr. Justice Douglas and the majority was not simply the shipowner's presence in the U.S. but rather the purpose and effect. Conceivably, the decision would not have varied had the shipowner remained in Greece and instead left a general agent to operate his lines in the United States. Or as in the instant case, where the shipowner remained in Greece, maintaining the physical offices outside the U.S., but retaining the type of substantial and continuing contacts with the U.S., discussed in *Rhoditis*. Ostensibly, here also the physical operation of the shipowner corporation is a mere ploy intended to circumvent the responsibilities and obligations under the Jones Act. It is only a cold objective look that reveals the actual operational contacts. It is averred that this was the feeling of the 2nd Circuit and likewise was the real intent of the Supreme Court in *Rhoditis*.

Relator realized that the court in *Lauritzen* renounced jurisdiction based solely on a vessel's contact with the port of a particular country while on a schedule bringing it into many ports of the world. (*Lauritzen* at 345 U.S. 581) However in the instant case, there are not and never were *any* contacts by the vessel S.S. SKINOS with the country of its flag, Greece. This is not a case of frequent and important contacts with both countries. As enunciated in *Lauritzen* at p. 582, the complainant's burden is to prove by a preponderance, the weightier contacts between the transaction and the states or governments whose *competing laws* are involved. The numerous contacts by the S.S. SKINOS with the U.S. ports as compared with Greek ports in the instant case should not be lightly disregarded. They were the significant consideration in *Rhoditis* which was not contrary to the decision in *Lauritzen* but rather a correct interpretation thereof.

If *Rhoditis* was talking about something more than physical domicile of the shipowners then certainly that decision is controlling in the instant case.

WHEREFORE, it is respectfully submitted that a writ of certiorari be granted.

LAW OFFICES OF
STEVEN R. PLOTKIN

Steven R. Plotkin

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing petition upon opposing counsel by depositing said copy in the United States Mail addressed to him, postage pre-paid, this 7 day of March, 1972.

STEVEN R. PLOTKIN

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CONCACIS YOHANES

No. 70-1131

versus

CIVIL ACTION
SECTION D

AYERS STEAMSHIP CO., INC.

MEMORANDUM OPINION AND ORDER

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BOYLE, District Judge:

This cause came on for hearing on the motion of the defendants for a summary judgment.

The following facts appear uncontroverted in the record:

Undisputed Facts

1. Plaintiff is a citizen and national of Greece, currently believed to be residing in Githiyow, Lakonious, Greece. The defendants are Ayers Steamship Co., George D. Gratsos Co., Ltd., Phoenix Shipping Co., and Marmana Compania Naviera, S.A. and the S/S SKINOS.

2. On January 23, 1970, plaintiff entered a contract of employment (Exhibit I) and pursuant thereto signed aboard the S/S SKINOS in Hamburg, Germany, on January 26, 1970.

3. The employment contract was made under the provisions of the Greek Code of Private Maritime Law and the Greek Collective Agreement between the Greek Shipowners Union and the Greek Seamen's Federation of 1969. The Collective Agreement (Exhibit II) provides that accident claims shall be judged only by competent Greek authorities and the Greek courts.

4. Plaintiff was injured aboard the S/S SKINOS when the vessel was in the Port of New Orleans.

5. As a result of his injury, the plaintiff was taken to the U. S. Public Health Service Hospital where he received treatment for a fractured toe, abrasions and contusions. He was treated at the Public Health Service Hospital

from April 7, 1970 to April 24, 1970 (Exhibit III).

6. Upon his discharge from the hospital, plaintiff was repatriated to Greece at the expense of the owners of the SKINOS where additional medical care has been rendered at least until July 3, 1970 (Exhibit IV).

7. The defendant, Ayers Steamship Co., Inc., was not the owner or operator of the SKINOS, but merely acted as the general agent of the time-charterer, Gallen Lines, Inc. (Exhibit V).

8. The SKINOS was at all times pertinent to this suit, operated by George D. Gratsos Co., Ltd. (Gratsos).

Gratsos operates the SKINOS with regard to all matters concerning the country of the flag, Greece (Interrogatory #17). Gratsos appoints the Master, enters into employment agreements with seamen, arranges allotments and deals with other formalities required by the Greek government. Gratsos maintains no office in the United States and has its principal office in Athens, Greece.

9. Defendant Phoenix Shipping Company is the operator of the SKINOS. Phoenix has no offices in the United States. Phoenix is the General Agent for the owners in London. It is an English corporation, of which the directors are

three Britishers and one Greek (Interrogatory II-1).

10. The record owner of the SKINOS is Marmana Compania Naviera S.A., a Panamanian corporation. Marmana's officers are a Canadian, a Greek and Greek-born Canadian. Its stockholders are a Greek and a Canadian (Interrogatory II-1).

No directors, officers or stockholders are residents of the United States. Marmana has never maintained an office in the United States, nor has it ever registered to do business in any state of the United States.

11. Between January 1, 1967 and April 6, 1970, the SKINOS called at U. S. ports 45 times. During that time, Gratsos managed three vessels that called at U.S. ports 46 times (Interrogatory 15).

12. The SKINOS is a vessel engaged in the carriage of goods for hire between various international ports. At all times pertinent to this suit, it sailed as a registered Greek vessel under the Greek flag.

It is the defendants' contention, under these facts, that:

1. the Jones Act, under which plaintiff has sued, is not applicable, and

2. this court should exercise its discretion to decline jurisdiction under the general maritime law. (*Langeş* v. *Green,* 282 U.S. 531, 51 S.Ct. 243, 75 L.Ed. 520 (1931); *Poulos* v. *SS IONIC COAST,* 264 F. Supp. 237 (E.D. La. 1967).)

The plaintiff maintains that Eastern District of Louisiana is the proper forum to adjudicate his claim and relies on

1. the alleged inaccessibility of the Greek forum,

2. the amount of business Marmana Compania Naviera, S.A. has done in the U. S.

3. an alleged claim for unpaid wages, and

4. availability of witnesses.

In the matter of Jones Act suits by foreign seamen against foreign ships, shipowners and operators, this Court is guided by the landmark decision of the United States Supreme Court in *Lauritzen* v. *Larsen,* 345 U.S. 571, 97 L.Ed. 1254, 72 S.Ct. 921 (1953) as supplemented by that Court's recent decision in *Hellenic Lines, Ltd.* v. *Zacharias Rhoditis,* ____ U.S. ____, 26 L.Ed. 2d 252, 90 S.Ct. ____ (1970).

Lauritzen sets out the seven basic factors to be weighted and considered in these cases:

1. place of the tort
2. law of the ship's flag
3. plaintiff's domicile
4. defendant's domicile
5. place of employment contract
6. inaccessibility of foreign forum
7. law of the forum.

While the *Rhoditis* court tells us these factors are not absolute rules of decision, they are available as useful guidelines for the determination of the propriety of allowing this suit to proceed in the present forum. As such, each factor will be considered as it relates to the uncontroverted facts in this case.

1. *Place of the tort*

The fact that the alleged injury took place aboard the SKINOS while she was in the Port of New Orleans is the only immediate point of tangency between this cause of action and the United States. *Lex loci delicto* is, as the *Lauritzen* court held, of limited application to shipboard torts because of the varieties of legal authority over waters navigated by the ship.

The mere fact that a foreign seaman was allegedly injured aboard a foreign ship while that ship was fortuitously in American waters is not such a compelling justification for requiring foreign corporations to defend a Jones Act suit in a United States forum.

2. *Law of the flag*

The SKINOS sailed as a Greek ship under the Greek flag. The plaintiff characterizes this as a "flag of convenience," but does not advance a factual basis for a theory under which the SKINOS could be considered an American ship. In this case, the directors and stockholders of the owning and operating corporations are Greek, British and Canadian. None are alleged to be U. S. citizens or aliens residing in the United States. Thus, even if the Greek flag is a device of convenience, there is no showing that the underlying allegiance is American.

3. *Plaintiff's domicile*

The plaintiff is a citizen of Greece, where he is presently residing. The United States has no interest in the plaintiff's injury save the fortuity that it occurred while his ship was in the Port of New Orleans.

4. *Defendant's domicile*

No defendant corporation, or director or major stockholder thereof, is alleged to be a U. S. citizen or resident. Herein lies the significant distinction between the instant case and *Rhoditis*. In *Rhoditis*, the majority stockholder in the defendant corporation was an alien residing in the United States. The court was moved by the inequity of allowing an alien, who received the benefits of American residence, including the protection of the Bill of Rights, to have an advantage over citizens engaged in the same business by

allowing him to escape the obligations and responsibilities of a Jones Act employer.

Under the facts of the present case, we find no similar inequity, but rather that the ends of justice would be subverted by requiring these foreign corporations, whose only connections with the United States arose from ships calling at United States ports, to submit to a foreign court and a foreign law a claim cognizable by the terms of plaintiff's employment contract only by the courts of Greece according to Greek law.

5. *Place of contract*

The employment contract was entered into in Piraeus, Greece, and the plaintiff signed aboard the vessel in Germany. The contract itself provided for adjudication of claims by the Greek courts under Greek law.

6. *Inaccessibility of foreign forum*

The plaintiff contends that the Greek forum is inaccessible because his medical witnesses are all doctors from the New Orleans Public Health Service Hospital where he was initially treated. However, the record shows that the local doctors administered such aid as was necessary and then advised repatriation. The medical records are available to the plaintiff, and, in view of the language barrier noted thereon, it is not likely that the doctors could further supplement the recorded findings.

It must be noted further that the truly significant medical testimony will be that of the Greek doctors who alone can testify to prove the plaintiff's alleged residual infirmity.

The plaintiff speaks no English. Neither does the boatswain, K. Kafkios, who will be a witness concerning the accident (Exhibit IX). (See *Vavatsikos* v. *Goulandris*, 208 F. Supp. 425 (E.D. La. 1963); *Jullien* v. *S/S MARSEILLES*, 214 F. Supp. 770 (E.D. La. 1963).)

In opposition, the plaintiff has filed a self-serving statement that he has been unable to get proper legal consideration of his claim in Greece. This conclusory affidavit is insufficient in the light of those facts appearing in the record. This court will not impute incompetence to the Greek physicians or callousness to the Greek courts. (See *Kapatos* v. *Barlby*, 238 F.Supp. 654 (E.D. La. 1965).)

7. *Law of the forum*

The Jones Act exists and was enacted primarily as a remedy for American seamen and to encourage safe practices by American shippers. The lack of connection between this cause of action and the United States would make application of the Jones Act improper. Plaintiff has alleged that his claim for unpaid wages under 46 U.S.C. 596 and 597 keeps him in this court. The complaint, however, asserts a claim for loss of wages, not a claim of unpaid wages. As evidenced by Exhibits VI, VII and VIII (account of wages, telegram of authority to pay, and receipt signed by plaintiff)

it appears that all wages due to plaintiff were paid prior to his repatriation to Greece.

Rhoditis requires this Court to consider the significance of all factors in light of the national interest to be served by the assertion of Jones Act jurisdiction. Having done so, we conclude that the motion of the defendants for a summary judgment dismissing the plaintiff's suit at his costs should be and it is hereby GRANTED. The judgment of dismissal is stayed for 90 days to allow the plaintiff to file his complaint in the proper foreign tribunal having jurisdiction. If defendants enter an unconditional appearance in the foreign tribunal, and file a bond for security or letter of undertaking in the amount of $100,000.00, the claims under the Jones Act and general maritime law will be dismissed. If defendants fail to do so, this order will be recalled.

New Orleans, Louisiana, this 6th day of January, 1971.

(Signed) EDW. J. BOYLE, SR.
UNITED STATES
DISTRICT JUDGE

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 71-1246

CONCACIS YOHANES,
Plaintiff-Appellant,

versus

AYERS STEAMSHIP CO., INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana

(November 16, 1971)

Before GEWIN, GOLDBERG and DYER, Circuit Judges.

PER CURIAM: The appellant Yohanes complains of the district court's action in dismissing his complaint upon defendant's motion for summary judgment.[1] There is no dispute as to the material facts. We affirm.

[1] In its order the district court stayed its dismissal for ninety (90) days. The following is from the court's order:

> The Judgment of dismissal is stayed for 90 days to allow the plaintiff to file his complaint in the proper foreign tribunal having jurisdiction. If defendants en-

Yohanes is a Greek seaman who sued for damages for personal injuries allegedly sustained aboard the S/S SKINOS on April 6, 1970, when the vessel was in the port of New Orleans. Yohanes brought suit under the Jones Act and general maritime law against the foreign chartered and owned corporations which owned and operated the vessel and the domestic corporation which acted as the general agent for the time-charterer of the vessel. The S/S SKINOS is a vessel of Greek registration and flag. The employment contract was entered into in Piraeus, Greece, and Yohanes signed aboard the vessel in Germany.

Our review of the record and briefs in this case convinces us that the district court did not abuse its discretion in granting the defendants' motion for summary judgment dismissing the complaint. The district court carefully considered the facts here involved in light of the factors outlined in *Lauritzen v. Larson*, 345 U.S. 571, 73 S.Ct. 921 (1953). The court's detailed analysis was proper and we find that the record supports his conclusion that the Jones Act is not applicable[2] and that the court should decline jurisdiction of the general maritime claim on the grounds of *forum*

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ter an unconditional appearance in the foreign tribunal, and file a bond for security or letter of undertaking in the amount of $100,000.00, the claims under the Jones Act and general maritime law will be dismissed. If defendants fail to do so, this order will be recalled.

[2]cf. Hellenic Lines, Ltd. v. Rhoditis, 412 F.2d 919 (5th Cir. 1969), affirmed 398 U.S. 306, 90 S.Ct. 1731 (1970).

non conveniens. Anastasiadis v. S/S Little John, 346 F.2d 281 (5th Cir. 1965), *cert. denied* 384 U.S. 920, 86 S.Ct. 1368 (1966).

The judgment is AFFIRMED.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

EDWARD W. WADSWORTH
CLERK

ROOM 408-400 ROYAL ST.
NEW ORLEANS, LA. 70130
(504) 527-6514

December 8, 1971

TO ALL PARTIES LISTED BELOW
Re: No. 71-1246 —
Concacis Yohanes vs. Ayers Steamship Co., Inc.

Gentleman:

You are hereby advised that the Court has today entered an order denying the Petition ( ) for Rehearing in the above case. No opinion was rendered in con-

nection therewith. See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH,
Clerk
(Signed) CAROL A. GAUDET
Deputy Clerk

/cg
cc: Ms. Shirley Ann Basile
Mr. David Gertler
Messrs. Paul A. Nalty
William A. Ransom, III